

OGC HAS REVIEWED.

22 October 1953

MEMORANDUM FOR: Finance Division

25X1 SUBJECT : [REDACTED] - Status of Employment

REFERENCE : Your memorandum dated 14 September 1953, same subject

1. The reference raises a series of specific questions regarding the employment status of the subject former contract agent who was converted to staff agent status, effective 26 August 1953. These questions for the most part arise out of [REDACTED] rights with respect to annual leave accrued as of the termination date of his contract dated 29 March 1951 pursuant to Paragraph 5 thereof which provides:

"Leave. You will be entitled to all the rights and benefits of leave extended to employees in accordance with CIA regulations. This includes annual leave of 26 days and sick leave of 15 days per annum."

2. As a contract agent [REDACTED] could not be considered an employee of the Agency for purposes of leave benefits, although we concede the validity of the argument that by external legal standards he might be so regarded for other purposes. See Section 14.9, CFR's. Absent the provision of leave benefits under his contract, [REDACTED] would have no claim to such rights. Even though Paragraph 5, quoted above, incorporates a statutory basis for determination of the quantum of the benefit, the source of the right is purely contractual. As such, at the termination of the contract it must have matured or be forfeited.

3. With the foregoing expository statements in mind, we would answer in order the questions posed in the reference in the following manner:

a. Does he forfeit his leave balances due to the termination of the contract? No. This is an entitlement that has matured at the time of termination of his contract.

b. Is he eligible to transfer unused leave balances to his new status? No. Although the 1953 amendments to the Annual and Sick Leave Act of 1951 provide for the transfer of leave records for officers and employees changing to employment under

a different leave system, pursuant to regulations to be prescribed by Civil Service Commission, a contract agent cannot be considered an employee under any leave system. Accordingly, we believe the new provisions affecting transfer of leave records do not apply to him.

c. Is he entitled to lump-sum payment for unused annual leave earned under his contract? In view of our comments under questions a and b above, this question is answered in the affirmative.

d. Does service under his contract count as creditable government service in determining his leave category while a staff agent? No. Under Section 2062(a) of Title 5 USCA, there shall be included in determining years of service for purposes of ascertaining an employee's appropriate leave category, only such service as would be includable for purposes of determining the annuity benefits of an employee under the Civil Service Retirement System. [redacted] service as a contract agent is not creditable service for purposes of Civil Service Retirement benefits.

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e. Assuming that [redacted] service under the contract, is not government service and his appointment as a Staff Agent constitutes new and distinct employment, would he be entitled to Quarters Allowance while on TDY at Headquarters at the time of conversion, or is he only entitled to receive allowances effective upon return to his former post? [redacted] s entitlement to an overseas Quarters Allowance would appear to be contingent upon his authorized occupation of quarters abroad. If while here at Headquarters on TDY he had no expenses for occupation of overseas quarters there would appear to be no authority for granting him an allowance for such purpose. If on the other hand, as appears to be the case here, he continued to maintain quarters abroad while on TDY, his conversion to staff agent with a permanent station abroad would be sufficient authority for granting him a quarters allowance effective upon the date of conversion.

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[redacted]
Office of General Counsel

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